

COLL. CAT.

W
32
AN6
gc64
f

No. 217.

1830

IN ASSEMBLY,

March 2, 1830.

NLM

REPORT

Of the Committee on Medical subjects, on the petition of sundry practitioners of medicine in the city and county of New-York.

Mr. Harrison, from the committee on medical subjects, to which was referred the petition of sundry practitioners of medicine in the city and county of New-York, praying for a repeal of the present law, regulating the practice of physic and surgery, and the memorial of the New-York state society, and also the memorial and remonstrance of the Medical society of the city and county of New-York, as well as that of the Medical society of the county of Herkimer, against the repeal of the said law, beg leave, respectfully to

REPORT :

That they have had the same under their consideration, and that they have devoted to the subject, all the attention which its intrinsic importance, and the great respectability of the petitioners, as well as the acknowledged weight, influence and authority of the several medical societies, required of them.

The subject of medical education, and the adoption of suitable regulations, for practitioners in the healing art, have been objects of interest and solicitude to the Legislature for many years; and repeated and varied enactments are to be found upon our statute books, having in view the promotion of medical science, and the interests of that profession, which is deemed of vital importance in every well regulated community. As early as the year 1760, the attention of the Legislature was attracted to this subject, and it was found expedient, by certain enactments, to regulate the practice of

physic and surgery ; and although your committee do not deem it necessary to advert particularly to the several acts that were passed, and the revisions made in our laws on the subject, between that period and the year 1813, when they underwent their last general revision, yet that it will not be improper to remark, that in 1792, the former act was considerably modified, and new provisions to protect the community against irregular practitioners introduced ; and also that in 1797 a general law was passed upon the subject, which was so far adapted to the objects had in view, and was so satisfactory, both to the profession and to the state, as to remain unaltered until 1806, when the whole system was changed, by the incorporation of the state and county medical societies. This important alteration in the structure of our laws on medical practice, seems to have been produced by a conviction on the part of the Legislature, as well as of the state at large, that the profession ought, as a matter of right, to be placed upon the same ground with that of every other, and that its members should enjoy the privileges of regulating their own immediate concerns. Public sentiment was guided by experience on this occasion, and the spirit of inquiry was soon led into the true channel. Legal and ecclesiastical tribunals and associations were familiar to every one, and as they had for ages been the only constituted judges of the qualifications of their respective members, and had been allowed to exercise the power exclusively of admitting them to, or of depriving them of their professional immunities, a rational analogy led at once to the right conclusion, viz. that professional men only were properly qualified to regulate professional pursuits.

In the incorporation of the state and county medical societies, in 1806, the state transferred the power of judging of the qualifications of physicians, and of granting licenses to practise, from the legal tribunals and authorities, and vested it in the members of the profession themselves ; and to give efficiency to the system, and authority to the proceedings under it, the diplomas conferred by the societies secured to the licentiates all the immunities which the state had the power to bestow.

A revision of this act was made in 1813, but no material alteration was made in its features, except only as it related to unlicensed practitioners. The penalty against them was preserved, excepting however from its operation, those who made use of the indigenous productions of our country only, in their practice. And it is these

acts of 1806 and of 1813, which together with the amendments in 1818 and 1819, that constitute essentially the medical law of the state, and furnished the foundation for the recent superstructure of the revisers.

Your committee do not deem it necessary either to analyze, or to state in detail the various provisions contained in the Revised Law of 1813, and in the amendments afterwards made, as it is to be presumed, they are familiar to every member of the House. It will be sufficient for them to say that they formed collectively a body of regulations, which at the time of their adoption, seemed to embrace every thing that was required to elevate and dignify the profession, and to secure to the community all the advantages which a well matured plan of medical education, and the certainty of having well instructed physicians, could afford.

Just, and rational, and admirably calculated as this system really was, to sustain the interests of the profession, and to promote the public welfare, yet it was not to be expected that it would be found perfect in all of its provisions. It was true the right principle had been discovered, but it was in the *application* of this, to the numerous and diversified objects included in the law, that error was to be apprehended, and accordingly, as was foreseen, further experience was enabled to point out defects, which it became the province of the Legislature from time to time to correct. But still the law has continued unto the present time to shed its benign and truly happy influences, not only upon the profession, but upon the community at large.

In the late revision of our laws in 1827, it was deemed necessary by the revisers to modify some of the provisions of the former act, and to introduce additional enactments, the better to regulate, define and strengthen the whole. These additions by the revisers have been denominated "General regulations concerning the practice of physic and surgery in this state," and are comprised in the 7th title of the 14th chapter, part first of the Revised Statutes; and it is from the introduction of these new provisions, that the present dissatisfaction and complaints have originated, and which have now reached the Legislature in such an imposing form.

In proceeding to investigate the causes of complaint as set forth by the petitioners, the committee propose in the first place to pass in review the several regulations that have been adopted by the re-

visers, and to examine how far they are in conformity with the spirit of the previous enactments, and in what respect they are to be considered as departing from it, and to be viewed as oppressive, odious, or derogatory to the true interests and character of that profession which they were designed to foster and protect. And in order to do this with some degree of perspicuity, and for more convenient examination, your committee will divide these regulations, as contained in the above named 7th title, chapter 14th, R. S., into four distinct classes. The first class of provisions presented to us, are those which prescribe the manner in which physicians and surgeons shall become members of the respective county societies, and designate the penalties for a non-compliance with the statute. This head comprises two sections only.

2d. Those provisions which relate to the punishment of members for "gross ignorance and misconduct in their profession, or immoral conduct and habits," from the 3d to the 7th sections.

3d. Such provisions as relate to the qualifications, term of study and license of students; the conferring of degrees by the regents, and by colleges; and of requirements from persons who may come from another state or country to practise in this state; from the 8th to the 21st section inclusive: and fourth, of such provisions as relate to unauthorised practitioners; section 22d.

With regard to the provisions contained in the two sections in the first class of regulations referred to, which provide for the admission of members by a compulsory process, your committee feel themselves obliged, in justice to the revisers and in defence of these provisions, to observe, that those of the former law upon this subject, for which these two sections were intended as a substitute, were found entirely inoperative, and that physicians and surgeons became members, or not of the county societies, as best suited their interests or inclination, as no penalty was affixed to this violation or omission of duty; and it seems to have been the intention of the revisers to affix such penalties as promised to insure a due observance of the requirement. It is this part of the law, and the proceedings under it, (and which, in the opinion of your committee, has been very imperfectly understood,) that furnishes the strongest ground of objection to the petitioners, and the strongest arguments by which the present law has been assailed.

The objections of the petitioners to this part of the law are—1st. That it compels them to become members under severe penalties ; and 2dly. That it compels the society to receive every empiric or other irregular practitioner, if such apply for admission.

These objections, at first view, appear to be valid and imposing, but a little attention has convinced your committee that they are fallacious ; although they have no doubt of the sincerity with which they are made, nor of the purity of motive from which they proceed. But whilst they readily award this tribute of justice to the petitioners, they cannot avoid the conviction, that these objections owe their origin either to a misapprehension of the duties imposed upon physicians by the incorporation of medical societies—a wrong construction of the law itself, or a misapplication of its provisions to the several objects to be effected by them. As before observed, the state in transferring its powers from the judicial authorities, in whom they were previously vested, to the several societies, conferred new rights upon the profession, and in return for these privileges, it is fairly to be assumed it was intended to impose new duties ; and then that the subject of medical education and medical practice, should be carefully guarded and faithfully attended to by those in whose hands the supervisory power had been placed ; and that it should be obligatory on the faculty to organize societies and to hold meetings, in order that such societies might intelligently and judiciously administer the concerns of that profession, in which the community had so deep an interest, and which had thus been confided solely to their care. But the provisions of the former law, as before stated, were found inoperative or nugatory, for they merely required physicians to associate together, without subjecting them to any penalty for a non-observance of the duty, and when novelty ceased, they became indifferent and inattentive, and the petitioners themselves have furnished the evidence in support of the fact, that many attended the meetings but rarely, that others absented themselves altogether, and that a rapid tendency to total dissolution had become apparent in many of these institutions. A remedy therefore was obviously required ; and as this was not to be found in the previous law, the duty of providing one, was imposed upon the revisers ; and the committee cannot refrain from expressing the belief, that it is such a one as the good of the profession, and the permanent welfare of the state required.

In regard to the penalties imposed by the law, for a non-compliance with its injunctions, the committee are of opinion, that the "forfeiture of license" is intended to be temporary only; and that the law does not contemplate its extension beyond the time of the special application for admission: and as the duty on the part of the society, of admitting, on such application, is clearly implied. This objection therefore, arising as it does from a misconstruction of the law, cannot be considered valid, especially as the disfranchisement, or deprivation of privilege can continue no longer than the contumacy it is intended to correct.

The second objection made to this part of the regulations by the petitioners, is, that the societies are compelled to receive every empiric, or other irregular practitioner, who may make application for admission: and the committee cannot but express their regret that the first section had not have been drawn in terms more definite and less equivocal, and that the words duly authorised to practise, or others of a similar import, had not have been employed by the revisers, to have vested in the societies, in express terms, the power of rejecting such applicants as were not empowered to practise by our laws. But the committee are nevertheless of opinion, that this power is fairly implied in the section alluded to, and that the words "every physician and surgeon not already admitted," &c. ought to be so construed as to include those only who are legally qualified. And if such signification is given to these words, then it follows that satisfactory evidence must be exhibited by every applicant that he has regularly studied, and has been duly authorised by law to practise physic or surgery. It appears to the committee therefore, that although the law is susceptible of amendment in this particular, yet that the societies do possess the power of judging of the qualifications of candidates, and of rejecting such as are not regularly licensed.

In directing their attention to the second class of provisions contained in the general regulations of the revisers, which relate to the punishment of members for "gross ignorance or misconduct in their profession, or for immoral conduct or habits," and the proceedings to be had when such charges are made, the committee have to observe, that in their opinion these provisions are important and necessary, as it seems to have been the intention of the Legislature originally, that the county societies should possess a controlling power over the conduct, of physicians in the respective counties, and they were accordingly authorised to expel members whenever their conduct professionally or morally, was such as to require or justify the measure.

But no loss of professional privilege followed such expulsion; and when such an occurrence took place, physicians, and the public in general, were more disposed to look upon the act as an impotent expression of personal hostility, than as a deliberate legal decision upon the professional merits or demerits of the individual so expelled. It was essential, therefore, to the preservation both of the dignity and authority of the county societies, that expulsion should be followed by other penalties; and although suspension from, or the entire forfeiture of professional immunity, seems at first view harsh and severe; yet, when it is observed that the "members of the other learned professions are often suspended, or permanently degraded" from their privileges in the most summary manner, and how carefully the rights of physicians in the case before us, are guarded and protected by the law, in requiring the concurrence of "two-thirds of the members present in the truth of the charges preferred," and in affording a full opportunity afterwards, on the part of the accused, to vindicate himself before a tribunal, that we are bound to believe, must be impartial and unprejudiced, and consequently the little danger, even by possibility, of these penalties being visited upon innocent and deserving members of the profession, impel your committee to express, and in the most decided manner, their entire approbation of this part of the law; and to add, that they do not see any thing in these provisions, either "dishonorable to the profession, or disgraceful to the state," as alleged by the petitioners. The District-Attorney is to be viewed in this case in no other light, and can have no other interest in the process, than as the representative or agent of the society, and through him the evidence is to be embodied, and the facts exhibited, as the president of the society, and even the accused, jointly with him, may himself require. And the judges of the county court are required to hear and determine the truth of the charges, upon the evidence which shall be laid before them.—The individual accused being in this way shielded entirely from the effects of either professional rivalry or professional prejudice in his judges.

Your committee pass now to the third class of provisions embraced in the regulations of the revisers, or such as relate to the qualifications, term of study, and license of students; the conferring of degrees by the regents and by colleges; and of the requirements from persons who may come from another state, or country, to practise in this state.

These regulations prescribe in substance, "That the regular term of study of medical science, shall be four years ; but that if the student, after the age of sixteen years, shall have pursued any of the studies usual in the colleges of this state, or shall have attended a complete course of all the lectures delivered in an incorporated college in this state or elsewhere," in either case, upon giving satisfactory proof thereof, one year shall be deducted from the term. But this attendance of all the lectures of an incorporated college, is not made the condition upon which is to depend the student's admission to an examination for a license, nor is his non-attendance on such lectures to be considered as any bar against such admission, as represented by the petitioners. The law only enjoins upon the candidate a pupilage of one year more, if he has not, or could not enjoy the advantages of such a course. This provision, therefore, does not interfere in the least, with the rights of private lecturers, as stated by the petitioners, but leaves, as it ought, such teachers at full liberty to pursue their avocation, and to students the same privilege, of choosing for their instructors, those, whose talents and professional acquirements may entitle them to the preference.

Your committee do not deem it necessary to dwell upon this part of the subject. The above provisions being so just and rational, and calculated as they are to be made so conducive to the interests of the profession and to the public welfare, that they are persuaded a mere recital of them is sufficient to carry the conviction of their utility, to every reflecting mind.

The power of conferring the degree of Doctor of Medicine, which shall also be a licence to practise, is vested by law in the Regents alone, and this honor is to be conferred only on such students as shall have attended the lectures in the incorporated institutions. But the petitioners do not complain of this, but of the inconsistency of the law, which denies the privilege of conferring degrees, which shall be a license to practise, to the colleges not incorporated by the state. But as this is a question of much interest to the faculty in the city of New-York, as well as to the community at large, and more especially as several memorials upon this subject, as your committee have been informed, have been sent to the other branch of the Legislature, they are admonished both from respect to that honorable body, as well as from the great importance of the question, to refrain from any expression of opinion thereon.

The petitioners also object to the law, and remonstrate against the facilities which it affords to licentiates of another state or country, who may wish to practise in this state. But to correct this error it is only "necessary to refer to the 17th section of the regulations of the revisers, by which it will be perceived that every such licentiate is required to exhibit to the medical society of the country," in which he purposed to practise, satisfactory evidence, that he has regularly studied physic and surgery, according to the 9th section of the regulations, while the 16th section also makes additional provision in such cases;" thus placing the emigrant from another state or country, precisely upon the same footing with those who may have pursued their studies in this state. Your committee, therefore, are satisfied that the regulations in this respect, cannot, and ought not to be considered as either "odious, invidious or oppressive," as represented by the petitioners. But that on the contrary, they are founded upon reasonable and just principles, which, whilst they secure the interests of the profession, reflect honor upon the liberality of the state.

On the 4th and last division of the subject, your committee must be brief. No argument is necessary, in this enlightened age, to prove that those who are entrusted with the health and the lives of their fellow-men, should fit themselves for their functions, by some previous course of preparation and study, and that they alone should not be the judges of their qualification. From the admitted necessity of this, has arose that system of regulations which your committee have now passed in review. But apart from those who conform to the law, and study and practise their professions under such regulations as the government prescribe, another body of men, distinct and separate from them, assume the name, and appear at the bed-side of the sick, in the garb of the physician; and the credulity of mankind, ever ready to patronize what is secret and mysterious, has countenanced and supported their pretensions.

These men, whose numbers have so greatly increased within the last few years, in our state, and who unreservedly admit, that they possess no knowledge of the art, through the regular channels, and who submit to no test of their qualifications whatever, now also come forward, and ask for the repeal of a portion of our statutes, on the ground that they are unjust and oppressive, and deny to them the privilege accorded to every other class of citizens, to wit: that of engaging in such employments as inclination, or a regard to their own interests may prompt them to pursue.

But your committee are persuaded that the practice of empirical physicians is a positive evil, and fraught with the most dangerous consequences to the community. The ignorance of these practitioners of anatomy, or of the changes produced in the human body by disease, and their evident want of knowledge, even of the science from which they have borrowed their name, ought to satisfy every reflecting individual of their utter unfitness to practise a profession, which requires an intimate acquaintance with these subjects not only, but with many others relatively useful in the practice of the well educated physician. But although your committee are convinced that for the good of society, legal restraints should be imposed upon this class of practitioners, yet they are not disposed to believe that they can, or that they ought to be immediately suppressed by the infliction of pains and penalties, inconsistent in their nature with the benign spirit of our laws, and the genius of our government. Fine and imprisonment are punishments inapplicable to the offence, as they carry with them too much of the appearance of tyranny and persecution, and the objects of the law are defeated by the severity of its penalties. Your committee have no hesitation, therefore, in recommending the repeal of that portion of the statute which imposes fine and imprisonment upon this class of practitioners, leaving them still liable to the other disabilities prescribed by the law.

In the preceding examination, the committee trust they have been guided by a spirit of candor and impartiality ; and that they have demonstrated as clearly as their confined limits would admit, that the general regulations adopted by the revisers, are in perfect consonance with the spirit of our former enactments ; and that they are admirably calculated to improve and strengthen the whole system. That they clearly define the duties, and indicate the responsibilities of physicians ; prescribe the period of pupilage, and create a standard of professional acquirement, without being oppressive, unattained before, and which hereafter must elevate the profession to the highest degree of respectability and usefulness. No system, superior to it, perhaps could be devised ; and your committee are of opinion, that it would bear a favorable comparison with that of any other, either in this country or elsewhere, and they cannot therefore withhold from it their entire approbation : And this sentiment, they are persuaded, will be responded to by nearly the whole profession in the state. And in support of this, your committee are happy in being able to cite the resolution of the State Medical Society at its

late meeting, unanimously adopted, and carrying with it the united testimony in favor of the law, of every county represented in that body, to wit :

“ *Resolved*, That we, the Medical Society of the State of New-York, are thoroughly convinced of the extreme practical utility, and beneficial tendency of the present existing law of this state, regulating the practice of physic and surgery.”

No petition against the law has been presented from any part of the state, except from the city of New-York, which also affords the strongest evidence of the favorable light in which it is viewed by the profession at large. And in that city, your committee feel warranted in believing, much of the opposition to the law arises from local causes and circumstances not affecting or influencing physicians in other parts of the state. The unfortunate division existing in that city on the subject of the college charter, has had its full share in producing this hostility to the law ; as it is presumed several of those who are most distinguished on the list of the petitioners, would have been found the warm advocates of it, but for the unhappy dissents existing between the rival institutions there. Besides, the very injudicious proceeding of the medical society of that city, in continuing to exact an inordinate initiating fee on the admission of members, after the alteration in our statute, compelling physicians to become members, has had a powerful effect in exciting opposition, and rendering the law odious.

The supreme court, as appears from the report of the Attorney-General, have lately decided the exaction to be legal ; but it will not meet with the sanction of the profession ; and the committee cannot approve of any attempt to enforce a mere by-law by a resort to legal measures. It would be alike repugnant to sound principles, and sound policy. To compel individuals to join the societies under a penalty no less severe than the loss of their licenses, and then to meet them at the threshhold with a heavy pecuniary exaction as the price of their compliance, is wrong in principle and wrong every way. Your committee, therefore, respectfully suggest the propriety of removing this cause of complaint, by abolishing the power of imposing an initiating fee altogether, as the funds to be derived from the annual contributions, may, in their opinion, be made fully adequate to all the pecuniary wants of the societies.

Finally, the committee beg leave to submit to the House that these regulations of the revisers, have been in operation but two years only, and that their experience for that short period has suggested nothing that would justify your committee in recommending a change of the present system. It remains, therefore, for them only to repeat to the House their conviction that the prayer of the petitioners *ought not to be granted*, and that it is not expedient to make any alterations in the law at the present time, except those suggested by your committee; and for that purpose they have directed their chairman to ask leave to introduce a bill.